

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7020**

**BILL NUMBER:** SB 401

**NOTE PREPARED:** Jan 3, 2012

**BILL AMENDED:**

**SUBJECT:** Buy American in Public Works and Purchasing.

**FIRST AUTHOR:** Sen. Lanane

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill provides that every public works contract must require that products used or supplied under the contract must be manufactured in the United States.

It provides that this requirement does not apply to a particular product if the head of the public agency letting the public works contract makes a written determination that:

- (1) the application of the requirement to the product is inconsistent with the public interest;
- (2) the product is not produced in the United States in sufficient quantities or of a satisfactory quality to meet the requirements of the contract; or
- (3) requiring the product to be made in the United States will increase the cost of the overall public works project by more than twenty-five percent (25%).

It also provides an opportunity for public comment before an agency head's determination waiving the requirement becomes effective.

The bill provides that a person that makes certain false representations relating to the country of manufacture of a product may not be considered responsible for purposes of awarding a public works contract.

It enacts a parallel statute relating to public purchasing by the state and political subdivisions. It also repeals a superseded public purchasing statute relating to the purchase of supplies manufactured in the United States.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures:** The bill could increase costs for products or supplies used in public

works projects and for public purchasing by requiring the use of steel and other products manufactured in the United States. The additional cost to determine if products and components are manufactured in the United States will be affected by the rules adopted by governmental bodies to promote purchase of products manufactured in the United States. Additionally, agencies could have to rebid projects if a person has made false representations as to the country of manufacture and is considered nonresponsible to be awarded a contract.

*Background and Additional Information:* Under current law, if steel or foundry products are to be used in a public works project, the public agency must use steel or foundry products made in the United States. It provides for a differential of 15% to be applied to determine the reasonableness of products of domestic origin. The differential may be increased to 25% if the head of the public agency determines that the purchase would benefit the local or state economy.

Under the bill, all products used in a public works project would have to be manufactured in the United States, except in certain circumstances. For products other than steel or foundry products, the bill requires that the manufacturing process take place in the United States and the manufacturing process for all components of the product take place in the United States. (The origin of subcomponents is excluded.)

*Public Works Projects - Steel and Foundry Products:* For FY 2010 the state had about \$50 M in public works projects; a rough estimate is that \$7.5 M of the projects involved steel or foundry products, and steel and foundry product costs were about 15% of the project costs. There is a 15% premium for the use of United States steel and foundry products, resulting in an estimated premium expense of \$562,500, or about 1.2% of the new construction costs. Steel made in the United States is stamped with the country of origin, but the state of origin of steel or foundry products is not as readily available, and the Department of Administration does not track the state of origin currently.

*Public Works Projects - Other Products:* Generally, public works project costs are 50% materials and 50% labor. (Equipment is purchased separately through the Procurement Division, which would increase the amount of materials used in the project.) Using the information above, about \$25 M was spent on materials in FY 2010.

*Other Products:* There are currently three absolute preferences for purchases through the bidding process, including one for United States manufactured products whenever possible under IC 5-22-15-21. A bidder claiming this preference certifies that the offered products are manufactured in the United States. If the cost of the product's components mined, produced or manufactured in the United States exceeds 50% of the cost of all its components, it meets the criteria for this preference. Even if a bidder offering a lower price on foreign-made products would not receive the award.

Assessing the origin of a product is complicated by manufacturers not providing the percentage of parts used by geographic origin and the frequent changing of the mix (by geographic origin) of the parts used in the manufacture.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** The purchasing agency of local units would have to adopt rules to promote the purchase of products manufactured in the United States and receive comments if the purchasing agency makes the determination that the rules do not apply.

**Explanation of Local Revenues:**

**State Agencies Affected:** All.

**Local Agencies Affected:** All.

**Information Sources:** Jim Newcomer, IDOA, 317-234-7296; *State of Indiana Vendor Handbook* available at <http://www.in.gov/idoa/2354.htm>.

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